101 Phil. 36

[G. R. Nos. L-9543 and L-9703. April 11, 1957]

ASUNCION NABLE JOSE AND AMPARO NABLB JOSE VDA. DE LICHAUCO, PETITIONERS, VS. THE HONORABLE RODOLPO BALTAZAR, JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, ET AL., RESPONDENTS.

D E C I S I O N

REYES, J.B.L., J.:

This appeal is taken from an order of the Court of First Instance of Pangasinan, rejecting and disapproving the plan and technical description of the "Hacienda El Porvenir" as prepared by surveyor Zacarias Gatchalian (Plan RS-384). For a proper understanding of the issue, it becomes necessary to restate the salient facts in the history of this long drawn out litigation.

By decision of the old Court of Land Registration, confirmed by this Supreme Court on May 1, 1905, the adjudication and registration of the "Hacienda El Porvenir", in the municipalities of Tayug, Natividad, San Quintin and Santa Maria, in Pangasinan province, was ordered made in favor of Crisanto Lichauco and the three sisters Amparo, Asuncion and Salud Nable Jose, as co-owners. Accordingly, Decree No. 1178, G. E. L. 0. Record No. 1, and Original Certificate of Title No. 7 of the land records of Pangasinan, both based on the plan prepared by the "Ingeniero de Montes" Aurelio Diaz Rocafull, in February of 1886, were duly issued in favor of said co-owners.

In 1912 the Director of Lands represented to the Court of Land Registration that because "it was impossible to properly locate them (the properties covered by titles) from the tie lines and the descriptions and surveys are of doubtful accuracy in many instances," new tie line surveys and boundary surveys should be made, and that the registered owners be ordered to point out to the surveyors on the ground the true limits of their properties as claimed and occupied. The court issued the order accordingly on November 12, 1912 (Exhibit C) :

> "Se Ordena.
> (A) Que todos y cada uno de los solicitantes arriba nombrados indiquen al agrimensor o agrimensores encargados de dicho trabajo en la fecha y liora que estos designaran, los limites correetos de las propiedades ocupados por los mismos y que sc describen en los Certificados de. Titulo cuyos. numeros se eonsignan a xenglon seguido de sus nombres respectivos en el encabezamiento de la presente orden."

Later, the court authorized that the new survey might be made by duly authorized private surveyors. The registered owners, Lichauco and Nable Jose, then caused surveyor Zoilo Garcia to make the survey of their property and he prepared plan Psu-17590, with its technical description. After corrections required by the General Land Registration Office had been made, the court, by order of March 1, 1923, approved the new plan and, cancelling all certificates of title heretofore issued, ordered the Register of Deeds of Pangasinan to issue new titles to the Lichauco and Nable Jose title holders. Thereupon Transfer Certificate of Title No. 1776 was issued. But upon protest of interested parties, on the ground that there had been no publication nor due notice of the motion asking for the approval of the amended plan and technical description, the' Court of First Instance subsequently set aside its previous order of approval. And on appeal, such action was upheld by this Supreme Court in 1934 (Lichauco vs. Heirs of Corpus, 60 Phil. 211).

Upon renewal of the motion to approve the Garcia plan in the court below, the Government and private oppositors objected on the ground that the same included land of the public domain, covered by some seventy (70) free patent grants, and that the title holders were bound by the Rocafull plan that the Garcia plan did not follow; and expositors also claimed that the plan of surveyor Sionil was the true delimitation of the "Hacienda El Porvenir". The Court of First Instance, on March 14, 1938, rejected the opposition and approved the Garcia plan (Psu-17590- Amd.) and its technical description. On appeal, this Supreme Court, by decision of 1940 (Lichauco et al vs. Director of Lands, 70 Phil. 69) reversed the order of the inferior court, saying:

> "It is essential to bear in mind that the two plans were supposed to be the product of a relocation survey. As should properly be, a relocation survey should follow the old corners used in the former survey in order to approach the same area and configuration. This, we believe, was what Sionil actually did, and it

> accounts for the close similarity between his plea and Rocafull's and the comparative distinction between the latter and the Garcia plan."

The records of the case having been destroyed as a result of the battles for liberation, they were subsequently reconstituted in this Court. Counsel for the registered owners Lichauco and Nable Jose then filed a petition for clarification that this Court resolved on March 11, 1952, in the sense—

> "That this Court having held in the decision rendered herein that the approval of the new plan submitted by petitioners-appellees would authorize not only the inclusion of land of the public domain which some 70 free patent applicants have been authorized to occupy, but also a reopening of the decree of registration long' closed and settled, and having for that reason dismissed the petition but without making any pronouncement as to what should be done to carry out the purpose of the above-mentioned order of the Court of Land Registration;
>
> This Court believes that there is still need for carrying out said order, copy of which has been attached to the record as Exhibit C, and tliat the case should be remanded to the Court below for such proceedings as may be proper for that purpose, but with instructions to adhere to the rulings laid down in the decision already rendered herein. So ordered.
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> Tile Chief Justice took no part." (Annex B, p. 2-3).

The records having been remanded to the court of origin, Judge Leano of said court issued on February 16, 1953, an order commanding the Director of Lands—

> "to resurvey, free of charge, the land involved in the above entitled case, based on the Rocafull plan,"

Upon previous notice to and in the presence of all parties interested and their counsel. The Director commissioned surveyor Zacarias Gatchalian to carry out the court order, and upon notice to all
parties, said surveyor proceeded to his task. Upon its completion he submitted to the court his report, with the corresponding plan, RS-364. The report was then set for hearing.

> On the date set, the registered owners allegedly offered to introduce evidence (altho this .fact is disputed by respondents), to show that the Gatchalian plan covered the same lands covered by the Rocafull plan upon which the registration decree rested; but the lower court did not deem it necessary to hear the evidence— 'because it is very clear that the product of the Gatchalian survey exceeded the decree area of Rocafull. If the court approves the Gatchalian Report and Survey plan, then it would be tantamount to giving the applicants mare than the decreed area, which this court believes it has no power to do.

For this reason and because of the similarity of the Gatchalian plan to the Garcia plan (already rejected by this Supreme Court in the previous decision of 1940), the court below disapproved the Gatchalian survey and entered an order to the Director of Lands,

> "to make a relocation survey of the lands involved in this case, making' as a basis thereof the Rocafull plan",

in accordance with the Manual of Regulations governing land surveys in the Philippines.

Thereupon, the registered owners seasonably petitioned this Court for a writ of certiorari and/or mandamus, to order the court below to allow petitioners to present evidence on the Gatchalian plan or give due course to their appeal. We gave doe course to their petition.

The petitioners aver that our resolution of March 10, 1952, virtually authorized a resurvey of the "Hacienda El Porvenir", by remanding the records to the court of origin for the carrying out of the order of November 12, 1912 (Exhibit C) ; that Judge Leano so understood it and therefore ordered "a *resurvey*, free of charge, of the lands involved in the above entitled case, based on the Rocafull plan"; that in rejecting Gatchalian's resurvey, and ordering a new relocation survey, Judge Baltazar violated the orders of this Court.

In our opinion, the stand taken by the petitioners Li-chauco and Nable Jose rests upon a misinterpretation of the orders heretofore issued by the Supreme Court. The surveys executed by surveyors Zoilo Garcia and Andres Sionil not having been found acceptable by this Court, the order of November 12, 1912 (Exhibit C) remained unexecuted; wherefore, as recited in our resolution of March 11, 1952, "there is still need of carrying out said order" (Exhibit C), and the records had to be remanded to the court of origin. But our resolution carefully instructed the court below "*to adhere to the rulings laid down in the decision*

already rendered herein". These words evidence the resolution did not deviate from, but on the contrary reaffirmed, the 1940 decision of this Court (70 Phil. 69).

It will be recalled that said decision laid down two governing principles: (a) that the survey to be made pursuant to the order of the Court of Land Registration of November 12, 1912, should be a *relocation survey*, that "should follow the old corners used in the former (Rocafull) survey, in order to approach the same area and configuration"; and (b) that a material departure therefrom and the inclusion of lands not originally covered by the Rocafull plan (as was done by surveyor Zoilo Garcia) would constitute an alteration of the original decree of registration that was not permissible (70 Phil, pp. 83-84, 85).

> "We are of the opinion that, even if there really existed an error of closure as claimed, the court below was without authority to entertain, much less grant, the petition of August 7, 1934. The approval of Plan Fsu-17590 as amended would authorize not only the inclusion of land of the public domain which some seventy free patent applicants have been authorized to occupy but also a reopening of a decree of registration long closed and settled. It is well settled that after the issuance of the decree of registration of a land upon which a judgment has become final, no error can be corrected any longer regarding the area of the land. (Manlapas & Tolentino vs. Llorente, 48 Phil., 298.) It seems clear, therefore, that what the lower court has attempted, and in fact accomplished, was not the correction of an error of closure, but a retrial of the case and the subsequent approval of an entirely new decree of registration. This is not permissible.
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> In an effort to exhibit authority in the lower court to take cognizance of, and grant their petition, counsel for the heirs of LIchauco cites section 58 of Act No. 496 as amended. Said section 58. while empowering the court to hear and receive evidence on the question of discrepancy between an original plan and a subdivision plan subsequently drafted does not permit the reopening of an original decree of registration. Considering" that the subdivision plan prepared by Zoilo Garcia comprises land not part of the Rocaful survey, the lower court acted without or in manifest excess of its legal jurisdiction."
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> "It is essential to bear in mind that the two plans were supposed to be the product of a relocation survey. As should properly be, a relocation survey should follow the old corners used in the former survey in order to approach the

> same area and configuration. This, we believe, was what Sionil actually did, and it accounts for the close similarity between his plan and Rocafull's and the comparative distinction between the latter and the Garcia plan."

The result flowing from these pronouncements is that the only survey authorized by our final resolution of March 10, 1952, is a *relocation* survey, one that must retrace the footsteps of surveyor Rocafull as closely as possible, and should not depart therefrom except where unavoidable in order to correct errors of closure or of computation.

Petitioners correctly contend that the original decree ordered the registration of the land and not of the plan; but the land thus decreed is that delimited by the basic Rocafull survey and technical description. Whether that survey erred in defining the true boundaries of petitioners' property is a matter no longer open for consideration or revision in these proceedings for the original decree has long ago become final and unalterable.

It is likewise true that the mere fact that the Gatchalian survey shows a different area from the one originally decreed, does not by itself conclusively prove that the land shown in the new survey is different, for the variance in area may have been due to computational errors committed by the original surveyor. On this ground, the appellants may have reason to complain that the court below did not, as it should have, give them opportunity to show that the Gatchalian survey faithfully complied with the directives of this Court. But since the court below has ordered a new relocation survey, we find that a separate appeal from that order is inapposite and that valuable time would be gained by allowing the new survey to be carried out, and then afford all parties ample opportunity to debate and show whether it is the Gatchalian plan or the new relocation survey that strictly adheres to the decisions and orders of this Court. Were the new relocation survey ordered by Judge Baltazar to be suspended until this Court can determine whether the Gatchalian survey is in accordance with our directives, valuable time would have been lost should the results turn out to be adverse to the contention of herein petitioners. No unnecessary delay should be brooked in a case that has been in litigation for over forty years.

In view of the foregoing, and finding no abuse of discretion committed by the court below, the petition for certiorari is denied, but the right is reserved to the petitioners to show, at the proper time, that the Gatchalian survey constitutes a more accurate relocation survey than the one ordered by respondent Judge Baltazar. Costs against the petitioners. So ordered.

G. R. Nos. L-9543 and L-9703. April 11, 1957

Bengzon, Montemayor, Reyes, A., Baulista Angelo, Labrador, Conception, Endencia, and *Felix, JJ.*, concur.

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